

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

**RITA AND PAM JERNIGAN AND
BECCA AND TARA AUSTIN**

PLAINTIFFS

v.

**LARRY CRANE, In His Official Capacity
As Circuit And County Clerk For Pulaski County
And His Successors In Interest; RICHARD WEISS,
In His Official Capacity As Director Of The Arkansas
Department Of Finance And Administration,
And His Successors In Interest; GEORGE HOPKINS,
In His Official Capacity As Executive Director Of
The Arkansas Teacher Retirement System And His
Successors In Interest; DUSTIN McDANIEL, In His
Official Capacity As Attorney General For The State
Of Arkansas And His Successors In Interest**

DEFENDANTS

RESPONSE TO SEPARATE DEFENDANTS' MOTION TO STAY

Plaintiffs, for their Response to Separate Defendants' Motion to Stay, state:

1. Plaintiffs admit that the procedural history of this case is as stated in Defendants' Motion.
2. Plaintiffs deny that a stay is proper in this case.
3. "A court may properly stay an action where the following three criteria are met: (1) the stay does not prejudice the non-movant; (2) the movant would suffer hardship and inequity without a stay; and (3) the stay serves the interests of judicial economy and efficiency." *Adams v. Tyson Foods, Inc.*, 2007 WL 1539325, at *1 (W.D. Ark. May 25, 2007). Defendants cannot meet these three (3) criteria.

4. The Supreme Court has held that granting a stay in one case pending the outcome of another is permissible “[o]nly in rare circumstances.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936).

5. Yet Defendants ask that Court stay this case pending the Supreme Court’s decision in on appeal from the Tenth Circuit’s decision in *Kitchen v. Herbert*, a case out of a different Circuit which does not address all of the legal questions presented by this case. Most importantly, the Supreme Court has not even granted certiorari of the *Kitchen* appeal at this time.

6. Defendants’ Motion is simply an attempt to prolong the State’s ongoing deprivation of Plaintiffs’ constitutional rights.

7. The Fourth Circuit Court of Appeals denied a similar motion to stay the same day as Plaintiffs file this Response, thus allowing same-sex couples to marry in Virginia and disallowing any further deprivation of same-sex couples’ constitutional rights associated with marriage in Virginia pending a contrary ruling from the Supreme Court. See *Bostic v. Shaefer*, Case No. 14-1167, Doc. No. 247 (4th Cir.).

8. Plaintiff deny all allegations not specifically admitted herein.

9. For these reasons and the reasons set forth in the accompanying brief, the Court should deny Separate Defendants’ Motion to Stay.

WHEREFORE, Plaintiffs respectfully request that the Court deny Separate Defendants’ Motion to Stay, for their attorneys’ fees and costs, and for all other appropriate relief.

Dated: August 13, 2014

Respectfully submitted,

WAGONER LAW FIRM, P.A.

By: /s/ Angela Mann
Jack Wagoner III, A.B.A. # 89096
Angela Mann, A.B.A. # 2011225
Wagoner Law Firm, P.A.
1320 Brookwood, Suites D & E
Little Rock, AR 72202
Phone: (501) 663-5225
Fax: (501) 660-4030
Email: jack@wagonerlawfirm.com
Email: angela@wagonerlawfirm.com

CERTIFICATE OF SERVICE

I, Angela Mann, do hereby certify that a true and correct copy of the foregoing document was served electronically by means of the Court's ECF/CM system on the following attorney of record:

David M. Fuqua
dfuqua@fc-lawyers.com

Nga Mahfouz
nga.mahfouz@arkansasag.gov

/s/ Angela Mann